

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

REPUBLIC SERVICES OF INDIANA)	
)	
Plaintiff,)	
v.)	CASE NO. 1:21-CV-108-HAB
)	
COE HEATING & AIR CONDITIONING.)	
INC., AND GAS—FIRED PRODUCTS, INC.)	
d/b/a SPACE-RAY)	
)	
Defendants.)	

OPINION AND ORDER

On March 22, 2023, the parties filed a Stipulation of Dismissal as to Defendant Gas-Fired Products, Inc. d/b/a Space-Ray only. (ECF No. 49). Federal Rule of Civil Procedure 41(a) provides the terms upon which a plaintiff can voluntarily dismiss an action. Fed. R. Civ. P. 41(a). The Seventh Circuit has indicated that Rule 41(a) should be used for the limited purpose of dismissing an entire action rather than for dismissal of individual parties or piecemeal claims. *Taylor v. Brown*, 787 F.3d 851, 857 (7th Cir. 2015) (“Although some courts have held otherwise, we’ve said that Rule 41(a) does not speak of dismissing one claim in a suit; it speaks of dismissing an action—which is to say, the whole case.”) (first quoting *Berthold Types Ltd. v. Adobe Sys. Inc.*, 242 F.3d 772, 777 (7th Cir. 2001); then citing *Nelson v. Napolitano*, 657 F.3d 586, 588 (7th Cir. 2011)).

According to the Seventh Circuit then, Rule 41(a) is not the proper vehicle for dropping individual parties or claims. *See Taylor*, 787 F.3d at 858 n.9. (“The parties indicated that it’s common practice in some district courts in this circuit to allow the voluntary dismissal of individual claims under Rule 41(a). If that is true, we remind judges to use Rule 15(a) instead.”). If Plaintiff desires, instead, to amend the complaint under Federal Rule of Civil Procedure 15(a)

to remove Gas-Fired Products, Inc. d/b/a Space-Ray, leave is so granted. Plaintiff has until April 14, 2023, to file an Amended Complaint.

CONCLUSION

For the reasons stated above, the Stipulation of Dismissal as to Gas-Fired Products, Inc. d/b/a Space-Ray only (ECF No. 49), has no effect and will be termed as a pending motion on the Court's docket.

SO ORDERED on March 28, 2023.

s/ Holly A. Brady

JUDGE HOLLY A. BRADY

UNITED STATES DISTRICT COURT